EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 11-CV-00520-PAB-BNB

DEPOSITION OF DAVID HICKS January 11, 2012

HEALTHGRADES, INC.,

Plaintiff,

vs.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

APPEARANCES

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Job No. NJ371356

Pursuant to Subpoena and the Federal Rules of Civil Procedure, the deposition of DAVID HICKS, called by Defendant, was taken on Wednesday, January 11, 2012, commencing at 8:02 a.m., at 1200 17th Street, Suite 3000, Denver, Colorado, before Andrea Ballantyne, Certified Shorthand Reporter and Notary Public within and for the State of Colorado.

I N D E X

DEPOSITION OF DAVID HICKS

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A. Once again, I don't know. They provided it to us.

Q. (By Mr. Stimpson) And the next page, you see there's information provided on internship?

A. Yes.

Q. Okay. Provided from third parties as well?

A. Yes.

Q. Next page, information on residency?

A. Yes.

Q. Also provided from third parties?

A. Yes.

Q. Next page, fellowship?

A. Yes.

Q. Also provided from third parties?

A. Uh-huh.

Q. Next page, physician licensure, do you see that?

A. Yes.

Q. Also provided from third parties?

A. I believe so.

Q. Next page, 32068, government disciplinary actions?

A. Yes.

Q. Also provided by third parties?

A. Yes.

Q. Next page -- actually, Page 32071, board certification?

A. Yes.

Q. Also provided by third parties?

A. Yes.

Q. Let me refer you back to Claim 1 of the patent. I'm specifically going to refer you to the page, Column 20, and the line at the bottom there that talks about, around Line 50, compiling information.

A. Yes.

Q. So this paragraph is talking about information that's compiled by third parties, right?

A. Yes.

Q. And you see at the bottom of that paragraph they start: board certification, licensure, disciplinary action information, medical school, medical internship, medical residency and medical fellowship information.

Do you see that?

A. Yes.

Q. Every single one of those was found in this 2004 report that we just went over, right?

A. I believe so.

Q. Did this list come from these 2004 reports?

A. I don't know. I don't recall.

Q. Do you think it might be a coincidence that this list exactly matches what's in this 2004 report?

MR. VÁZQUEZ: Form. argumentative.

A. I don't know.

Q. (By Mr. Stimpson) Do you have any reason to disagree with me, that this list comes from the 2004 report?

A. Again, I don't know.

Q. In 2004, were there other healthcare provider information categories that were used as well?

A. I don't recall.

Q. Philosophy?

A. I don't remember.

Q. How about gender?

A. I don't remember.

Q. How about age?

A. I don't remember.

Q. Awards, honors?

A. Again, I don't remember.

Q. If you could, turn to Page 32072, please.

A. (Deponent complied.)

Q. Actually 32072 and 73. This report from 2004 shows ratings of healthcare providers, right?

MR. VÁZQUEZ: Form.

A. It shows ratings for hospitals.

Q. (By Mr. Stimpson) Right. A hospital is a healthcare provider, right?
A. Yes.
Q. So am I right then that this report from 2004 shows ratings of healthcare providers?
MR. VÁZQUEZ: Form.
A. Yes.
Q. (By Mr. Stimpson) 32075, please. Do you see "gender" there?
A. Yes.
Q. And where did you get that information in 2004?
A. Third-party source.
Q. Are you sure this came from a third-party source and not from the healthcare provider?
A. Relatively certain.
Q. How would you know that?
A. I don't believe in 2004 we had the capability to collect that from healthcare providers.
Q. Well, pick up the phone and call them, right?
MR. VÁZQUEZ: Form.
A. I don't know.
Q. (By Mr. Stimpson) Do you know if anybody was doing that?
A. I don't know. I don't remember.
Q. How would we find out where this information on

providers, in the patent claim.

A. Okay.

Q. Right. Did you come up with that idea?

A. I don't recall.

Q. Do you remember who might have contributed to that?

A. No, I don't.

Q. How about the part about patient ratings up above here on the first "compiling" paragraph there? Patient ratings, do you remember if you were involved with that idea?

A. I don't remember.

Q. Do you remember if anybody -- anybody who was?

A. No.

Q. Can we look at 32100, please? This is a hospital quality report.

A. Yes.

Q. This is also 2004?

A. Yes.

Q. And this is also -- this report is basically just a report on ratings of healthcare providers, right?

A. Hospitals, yes.

Q. Yeah. A hospital is a healthcare provider, right?

A. Yes.

Q. And if you could turn to Page 32105.
A. (Deponent complied.)
Q. Are those comparison ratings under the orthopedics ratings?
A. They're service ratings.
Q. Are they comparison ratings of healthcare providers under Claim 1 of your patent, sir, in your view?
A. They're service ratings.
Q. Can you not answer the question?
A. I don't know. I think -- I don't know.
Q. There are several reports in Exhibit 8 from 2004, Mr. Hicks, right?
A. Yes.
Q. Why didn't you disclose them to the United States Patent and Trademark Office in connection with the prosecution of the '060 patent?
MR. VÁZQUEZ: Form.
A. I don't know.
MR. STIMPSON: Want to take a break?
MR. VÁZQUEZ: Sure.
(Short recess from 11:30 a.m. to 11:41 a.m.)
(Mr. Kostolansky exited deposition room.)
Q. (By Mr. Stimpson) Let me show you what's marked as Exhibit 9, Mr. Hicks, a one-page document

bearing Bates No. HG0209647.

MR. VÁZQUEZ: 9. Thank you.

Q. (By Mr. Stimpson) Can you identify this document for me, please?

A. It's a report showing the patient experience surveys filled out. It looks like number of users that filled out a survey and number of surveys filled out.

Q. So at least as early as October 2004, HealthGrades was collecting patient-provided data on healthcare providers?

A. Patient experience surveys.

Q. Okay. And what did this survey request? Do you remember?

A. It was the questions we asked patients about that provider. For example, was the physician -- I don't remember all the questions and the specific sentences on those, but would you recommend this physician to family and friends; how friendly was the office staff; those kinds of things.

Q. Where would we find the results of these surveys? Are they still at HealthGrades?

A. I believe so.

Q. Who -- do you know where they would be?

Like, as opposed to just generally at HealthGrades, are they in somebody's office, on the

A. I believe so.

Q. On this next page, Page 2 of 2, there's a paragraph that starts there: "HealthGrades' Web site is the leading destination for healthcare ratings for consumers," continued Hicks.

That's a quote from you?

A. No.

Q. No. Oh, this is your brother?

A. Yes.

Q. Okay. Sorry. You can understand that.

A. I understand.

Q. But were there other healthcare ratings for consumers on the HealthGrades' Web site prior to the addition of these physician satisfaction surveys?

MR. VÁZQUEZ: Form.

A. On the HealthGrades' Web site? I'm sorry.

Q. (By Mr. Stimpson) Yes.

A. Can you repeat the question?

Q. Your brother is saying here that HealthGrades' Web site is a leading destination for healthcare ratings for consumers, right?

A. Yes.

Q. So my question to you is, before these physician satisfaction survey results were added to the physician quality reports, were there other healthcare

ratings for consumers on the HealthGrades Web site?

MR. VÁZQUEZ: Form.

A. I --

Q. (By Mr. Stimpson) Let me rephrase it.

A. I'm sorry. I'm really confused by your question.

Q. That's all right. Let me just rephrase it. It's not the first time I've asked a confusing question; it won't be the last.

When your brother refers to healthcare ratings for consumers --

A. Yes.

Q. -- what's he referring to there? Do you know?

A. Ratings of healthcare providers, I think.

Q. Okay. Is he referring to ratings of healthcare providers other than these physician satisfaction surveys?

MR. VÁZQUEZ: Form.

A. I don't know.

Q. (By Mr. Stimpson) That's okay. After the physician satisfaction surveys were added to the physician quality reports in at least August of 2005, why didn't you disclose those reports to the patent and trademark office in connection with the '060 patent?

MR. VÁZQUEZ: Object to form.

A. I don't know.

MR. STIMPSON: Can we get the privilege log?

MR. LEE: Exhibit 12.

(Exhibit 12 was marked.)

Q. (By Mr. Stimpson) Let me show you what's been -- sorry about the staple.

Let me show you what's been marked as Defendant's Deposition Exhibit 12. This is a privilege log we received from your -- from Merchant & Gould, which was the firm that prosecuted the patent, the '060 patent. You can see Merchant & Gould's name somewhere.

A. Okay.

Q. So what this does -- I know you're not familiar with a privilege log; so let me explain it to you. It's an -- attorney-client communications are privileged. They don't have to be disclosed to us. But what they have to do is they have to identify them in a log. It's just generally what's the subject matter, when was it.

This is the result. This is the privilege log. But there is some information we can get from privilege logs, and that's why I'm bringing it out to show you.

Could you look to No. 107 on the log, please?

A. (Deponent complied.)

Q. Number 107 refers -- it says it's an e-mail regarding next steps for patent application. Do you see

that?

A. Yes.

Q. And it's dated June 5, 2009?

A. Yes.

Q. And it shows that it was from Mr. Dodge and you were copied on it, right?

A. What's that last column, recipient?

Q. Yes.

A. Yes.

Q. Okay. So this tells us at least, Mr. Hicks, as of June 2009, you were at least involved in communications regarding the steps for the patent application, right?

A. I believe so.

Q. And so does that refresh your memory, you were, in fact, involved with this patent prosecution for the '060?

A. I was involved.

Q. I'm sorry, you --

A. Yes, I was.

Q. And that's true for the entire prosecution period from filing until issuance, generally, right?

A. Yeah. I think.

Q. Okay.

MR. VÁZQUEZ: Hold on. Hold on.

inventor on the '060 patent, does this show comparison ratings of healthcare providers?

MR. VÁZQUEZ: Object to form. Calls for a legal conclusion.

A. I'm sorry. Can you repeat the question?

MR. STIMPSON: You can read it, please.

(Requested portion was read.)

A. It shows the average response for surveys and then the national average.

Q. (By Mr. Stimpson) All right. And as a named inventor on the '060 patent, is that comparison ratings of healthcare providers?

MR. VÁZQUEZ: Same objections.

A. I think it just shows the response of six surveys and then a national average.

Q. So the answer is no?

A. That's what --

MR. VÁZQUEZ: Same objection.

A. -- it says.

Q. (By Mr. Stimpson) So you can't tell me whether or not this is comparison ratings of healthcare providers?

A. I don't --

MR. VÁZQUEZ: Same objections.

A. I don't know.

Q. (By Mr. Stimpson) It doesn't come out -- when you just look at it, it doesn't jump out to you as comparison ratings of healthcare providers, right?

MR. VÁZQUEZ: Same objections.

A. I don't know.

Q. (By Mr. Stimpson) Okay. And the user would obtain access to this report through this, HealthGrades' Web page, right?

A. I believe so.

Q. And that's -- we talked about this earlier, but they enter criteria. For example, they could put in this guy's name exactly, right? They could put in a request of David A. Drucker, and this would come up, right?

A. I think so.

Q. Okay. Can you tell from this report whether or not Dr. Drucker is a member?

A. A member of what?

Q. Of HealthGrades, the HealthGrades Web site. Let me back up a bit.

At this time in 2005, did you have the ability for physicians to be members of the HealthGrades Web site?

Do you know what I mean by "members"?

A. I'm not sure.

Q. Well, I mean, if Dr. Drucker wanted to be -- get special treatment on the HealthGrades Web site at this time in 2005, would he be able to do that by paying some extra money?

A. As part of our -- like our PNMM program, physician new media marketing program?

Q. As anything. Yeah, as part of anything.

A. I don't know if that was at this time or not, but that was one of the programs we had.

Q. You don't remember when that started?

A. I don't know exactly when it started.

Q. But was it started at the same time that you started collecting the information from healthcare providers?

A. I'm sorry. I don't really remember if there's a tie in on that.

MR. STIMPSON: I'm so used to having it videotaped, I keep doing this.

Give me a minute, and I'll see what else I have left.

MR. VÁZQUEZ: Off the record?

MR. STIMPSON: Sure.

(Short recess from 1:20 p.m. to 1:28 p.m.)

MR. STIMPSON: No further questions. Do you have any questions?